

throughout the United States with due regard for the comparative urgency of need for such buildings, except as provided in Section 4, no appropriation shall be made to construct, alter, purchase, or to acquire any building to be used as a public building which involves a total expenditure in excess of \$500,000 if such construction, alteration, purchase, or acquisition has not been approved by resolutions adopted by the Committee on Public Works of the Senate and House of Representatives, respectively.

Mr. Chairman, the law is clear that prior to the appropriation of funds for the construction or alteration of a public building which cost shall exceed \$500,000, a resolution must be reported by your House Committee on Public Works and Transportation approving such authorization. This action has not occurred to date. . . .

MR. [EDWARD R.] ROYBAL [of California]: . . . It is my understanding that the prospectuses for the construction that is in the bill have not been approved; is that correct?

MR. YOUNG of Missouri: Mr. Chairman, they have not been approved by our subcommittee nor by the full committee.

MR. ROYBAL: Since they have not been approved by any of the committees, I will concede the point of order, Mr. Chairman. . . .

THE CHAIRMAN: The point of order is conceded and sustained.

§ 9. Burden of Proof of Authorization

Burden on Proponent of Amendment

§ 9.1 The burden of proof is upon the proponent of an amendment to a general appropriation to show that the appropriation therein is authorized by law; and where the proponent was unable to cite a law authorizing the appropriation, the Chair refused to look beyond the absence of a statutory citation to determine whether a bill had been unconstitutionally "pocket vetoed".

The above principle is well established. Thus, on May 11, 1971,⁽⁴⁾ during consideration of H.R. 8190, a supplemental appropriation bill, the following proceedings took place:

MR. [FRED B.] ROONEY of Pennsylvania: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Rooney of Pennsylvania: On page 8, after line 15 insert:

4. 117 CONG. REC. 14471, 92d Cong. 1st Sess. See also 96 CONG. REC. 7426, 7427, 81st Cong. 2d Sess., May 22, 1950; 81 CONG. REC. 4684, 4685, 75th Cong. 1st Sess., May 17, 1937.

"NATIONAL INSTITUTES OF HEALTH

"HEALTH MANPOWER

"For an additional amount for 'Health Manpower,' \$25,000,000 to carry out programs in the family practice of medicine, as authorized by the Family Practice of Medicine Act of 1970 (S. 3418, 91st Congress), of which sums of not less than \$25,000 each shall be made immediately available for the planning and/or development of Departments of Family Practice at the Milton S. Hershey Medical Center of the Pennsylvania State University, and at the University of North Carolina at Chapel Hill, and at Harvard University and/or the Children's Hospital Medical Center, and at such other eligible institutions as may apply; funds appropriated by this provision are directed to be expended and shall remain available for obligation and expenditure until expended."

MR. [ROBERT H.] MICHEL [of Illinois]: Mr. Chairman, I make a point of order against the language of the gentleman's amendment.

THE CHAIRMAN:⁽⁵⁾ The gentleman will state his point of order.

MR. MICHEL: Mr. Chairman, the language is out of order on the grounds that we have no legislative authority whatsoever. There is nothing in the code, nothing in the statutes, no legislative authority whatsoever; and this is an appropriation bill. We cannot be appropriating for anything that is not authorized, and therefore it is clearly outside our realm of consideration here today.

Mr. Chairman, I simply make a point of order against the language. . . .

MR. ROONEY of Pennsylvania: . . . I am sure all of us realize what is in-

volved in the amendment I have offered here today.

The point of order has been made that it is out of order and that it is not germane. My contention is that it is germane. On December 1, in the 91st Congress, we passed this bill in the House. . . .

The bill was passed by the House on December 1 by a vote of 346 to 2. Two Members of Congress voted against the bill in the House. The bill passed the Senate 64 to 1.

On December 14, the bill was sent to the White House for the signature of the President. Subsequently, in accordance with a concurrent resolution, the Senate adjourned to a date certain from the close of business on Tuesday, December 22, 1970, until Monday, December 28, 1970.

MR. [H. R.] GROSS [of Iowa]: Mr. Chairman, I must insist that the gentleman is not addressing himself to the point of order.

MR. ROONEY of Pennsylvania: I am addressing myself to the point of order.

THE CHAIRMAN: The Chair would suggest that the gentleman is trying to address himself to the point of order. The Chair is ready to rule, and wants the gentleman from Pennsylvania to be as brief as possible.

MR. ROONEY of Pennsylvania: Both bodies, the House and the Senate, had given unanimous consent for designated officers to receive messages from the President during the Christmas recess.

The President took advantage of our Christmas recess to veto this legislation by a pocket veto.

Despite the fact that we were still in session, that we had officers from the

5. Wayne N. Aspinall (Colo.).

House and the Senate standing by ready to receive any veto message, he failed and refused to send it over, and instead he pocket vetoed this bill.

MR. [FRANK T.] BOW [of Ohio]: Mr. Chairman, will the gentleman yield?

MR. ROONEY of Pennsylvania: I am glad to yield to the gentleman from Ohio.

MR. BOW: Has the gentleman read the resolution of adjournment of the House? There is nothing in there on the receiving of messages or any papers from the President. It is a straight adjournment.

MR. ROONEY of Pennsylvania: I believe if the gentleman will look at the record he will find out that both Houses had officers standing by to receive any message from the President, and this is my contention.

MR. BOW: The adjournment resolution does not contain any such thing.

MR. ROONEY of Pennsylvania: It is my contention the President's declaration of a pocket veto in this instance represented an inappropriate use of such veto power.

In this session of Congress we are going to have 10 recesses, and the President can take advantage of the same pocket veto abuse of this legislation.

I maintain, Mr. Chairman, that this bill was enacted into law on the 24th day of December, 1970.

THE CHAIRMAN: The Chair is ready to rule.

The gentleman from Pennsylvania [Mr. Rooney] has offered an amendment providing \$25 million to implement the provisions of the Family Practice of Medicine Act of 1970.

The gentleman from Illinois has raised a point of order against the

amendment on the ground that it provides for an expenditure that is not authorized by law.

When the question of authorization is raised against an item in or an amendment to an appropriation bill, it is incumbent upon the committee reporting the bill or the proponent of the amendment to cite the law permitting the appropriation. The proponent of the amendment in this case has referred the Chair to the bill passed by the other body on September 14, 1970, and passed by the House on December 1, 1970. He has also outlined other legislative history concerning the bill, including the fact that the bill was sent to the President who saw fit to "pocket veto" the measure during the Christmas adjournment of the Congress last year.

The Chair is not oblivious to the fact that certain questions have been raised about the legal propriety of this veto. However, the Chair cannot rule on this constitutional question. The Chair may only refer to the statutes at large or the United States Code to find the authorization required to support this appropriation. Since no such statute can be cited, the Chair must sustain the point of order.

§ 9.2 It is incumbent upon the proponent of an amendment to an appropriation bill to cite authority in law for the proposed appropriation when a point of order is made on the ground of lack of such authority.

On May 7, 1957,⁽⁶⁾ the Committee of the Whole was consid-

6. 103 CONG. REC. 6430, 6431, 6446, 85th Cong. 1st Sess.

ering H.R. 7221, a supplemental appropriation bill. The following proceedings took place:

MR. [CLEVELAND M.] BAILEY [of West Virginia]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Bailey: Page 4, line 5, strike out "\$25,000" and insert "\$50,000. Of this amount the sum of \$25,000 is to be used to make necessary investigations abroad to determine the wage levels, costs of production and working conditions on articles imported from abroad to assist the Commission in processing claims for injury by domestic producers under section 7 of the Reciprocal Trade Agreements Act." . . .

MR. [PRINCE H.] PRESTON [Jr., of Georgia]: Mr. Chairman, I make a point of order against the amendment on the ground that there is no authority for the Tariff Commission to make an investigation abroad into the working conditions under which foreign commodities are produced.

THE CHAIRMAN:⁽⁷⁾ Will the gentleman from West Virginia cite to the Chair the authority for the Commission to make an investigation? . . .

MR. BAILEY: I could not advise the Chairman to that effect. But, I do not see why they should be limited to this country because apparently nobody else is. If somebody wants some information, they go abroad and get it. I think the Tariff Commission should be afforded the same opportunity. Members of the Congress, if you want to sit idly by and see the major part of your small American industry, which is the

backbone of our country, driven out of business, you just ignore a proposition like this.

THE CHAIRMAN: In view of the fact that there is no authority cited for the Commission to make the investigations contemplated in the amendment, the Chair sustains the point of order.

Parliamentarian's Note: After reading of the bill for amendment, but prior to the rising of the Committee of the Whole, the proponent of the amendment found authority in law for the proposed investigations and, by unanimous consent, the amendment was offered again and considered.⁽⁸⁾

Committee Has Burden of Showing Authorization for Item in Bill

§ 9.3 Language in a general appropriation bill appropriating \$5 million for the emergency fund for the President was held unauthorized by law, the Chair indicating that, in the absence of a statement to the contrary, the statement that no legislative authority existed for the proposed appropriation was dispositive of the point of order.

On Jan. 24, 1946,⁽⁹⁾ The Committee of the Whole was consid-

8. 103 CONG. REC. 6446, 85th Cong. 1st Sess., May 7, 1957.

9. 92 CONG. REC. 355, 79th Cong. 2d Sess.

7. Frank N. Ikard (Tex.).

ering H.R. 5201, an independent offices appropriation. A point of order was raised against the paragraph which follows:

EMERGENCY FUND FOR THE PRESIDENT

Emergency fund for the President: Not to exceed \$5,000,000 of the appropriation "Emergency fund for the President," contained in the First Supplemental National Defense Appropriation Act, 1943, as supplemented and amended, is hereby continued available until June 30, 1947.

MR. [HENRY C.] DWORSHAK [of Idaho]: Mr. Chairman, I make a point of order against the paragraph just read on the ground there is no legislative authority for the appropriation proposed.

THE CHAIRMAN:⁽¹⁰⁾ Does the gentleman from Florida desire to be heard on the point of order made by the gentleman from Idaho?

MR. [JOE] HENDRICKS [of Florida]: Mr. Chairman, I will leave that to the discretion of the Chair.

THE CHAIRMAN: The gentleman from Idaho [Mr. Dworshak] makes a point of order against the paragraph on the ground that the appropriation is not authorized by law. The Chair has stated to the gentleman in charge of the bill, the gentleman from Florida [Mr. Hendricks], that he would be glad to hear him. In the absence of any statement to the contrary, the Chair is bound by the statement of the gentleman from Idaho and, therefore, sustains the point of order.

Burden on Managers of Bill

§ 9.4 The burden of proving the authorization for lan-

10. William M. Whittington (Miss.).

guage carried in an appropriation bill falls on the proponents and managers of the bill; and where the lack of authorization is conceded in response to a point of order that the language is legislation, the Chair sustains the point of order.

On May 28, 1968,⁽¹¹⁾ the Committee of the Whole was considering H.R. 17522, a bill appropriating for the Departments of State, Justice, and Commerce. At one point the Clerk read as follows, and proceedings ensued as indicated below:

SALARIES OF SUPPORTING PERSONNEL

For salaries of all officials and employees of the Federal Judiciary, not otherwise specifically provided for, \$43,500,000 . . . *Provided further*, That without regard to the aforementioned dollar limitations, each circuit judge may appoint an additional law clerk at not to exceed grade (GS) 9.

MR. [H. R.] GROSS [of Iowa]: Mr. Chairman, I make a point of order against the language on page 42, beginning on line 3, which reads as follows:

Provided further, That without regard to the aforementioned dollar limitations, each circuit judge may appoint an additional law clerk at not to exceed (GS) 9.

Mr. Chairman, I make a point of order against this language on the

11. 114 CONG. REC. 15357, 15358, 90th Cong. 2d Sess.

ground that it is legislation on an appropriation bill. . . .

THE CHAIRMAN:⁽¹²⁾ Before the Chair rules on the point of order, can the gentleman from New York cite to the Chair the authority the gentleman says is already existing? . . .

The Chair will state that if the additional clerk is authorized somewhere in law, this would be a limitation upon the grade at which the clerk would be appointed. What is sought to be found out is whether there is existing legislation.

MR. GROSS: I point out, Mr. Chairman, "without regard to the aforementioned dollar limitations," and so on and so forth. It is not a limitation.

MR. [JOHN J.] ROONEY [of New York]: Mr. Chairman, I am sure this is authorized. However, we will concede the point of order in the interest of saving time and bringing it back to the House after the conference. This does not affect the amount of money for these law clerks.

THE CHAIRMAN: In view of that statement, the Chair sustains the point of order.

Burden on Committee on Appropriations

§ 9.5 The burden of proving that an item contained in a general appropriation bill is authorized by law is on the Committee on Appropriations, which must cite statutory authority for the appropriation.

12. Wayne L. Hayes (Ohio).

On June 15, 1973,⁽¹³⁾ an appropriation for the Office of Consumer Affairs, established by Executive order, was stricken from a general appropriation bill when the Committee on Appropriations failed to cite statutory authority in support of that item.

Chair Relies on Citations of Law Presented in Argument Chair Reversed Ruling on Showing That Original Cited Authority Had Been Superseded

§ 9.6 The Committee on Appropriations has the burden of proving the authorization for an appropriation included in a general appropriation bill, but the Chair may overrule a point of order upon citation to an organic statute creating an agency, absent any showing that such law has been amended or repealed to require specific annual authorizations. The failure of Congress to enact into law a specific authorization of appropriations for the Bureau of the Mint for the fiscal year

13. 119 CONG. REC. 19855, 93d Cong. 1st Sess. See also 119 CONG. REC. 38845, 93d Cong. 1st Sess., Nov. 30, 1973 (proceedings relating to H.R. 11576, supplemental appropriations for fiscal 1974).

in question was initially held not to render an appropriation for that agency subject to a point of order, upon citation to the organic law creating that agency and delegating its functions, where it was not brought to the Chair's attention that the organic law had subsequently been amended with the expressed legislative intent of requiring annual authorizations (a decision subsequently reversed by the Chair on his own initiative upon information that organic law had been amended).

On June 8, 1983,⁽¹⁴⁾ the Chair initially relied upon a citation to the organic law creating the Bureau of the Mint, in order to uphold an appropriation for that agency. Subsequently, reversing his own ruling that the appropriation was authorized by a general statute creating the office and delegating to it functions and responsibilities, the Chair ruled that the appropriation for the Bureau of the Mint was not authorized by law, where the organic statute creating the Mint and implicitly authorizing the appropriation of funds had been substantially

amended and recodified with the stated legislative purpose of requiring annual authorizations for the Bureau of the Mint. The proceedings were as follows:

The Clerk read as follows:

BUREAU OF THE MINT

SALARIES AND EXPENSES

For necessary expenses of the Bureau of the Mint: \$49,558,000.

MR. [FRANK] ANNUNZIO [of Illinois]: Mr. Chairman, I make a point of order that the appropriations for the Bureau of the Mint, salaries and expenses, contained in title I are not authorized by law. . . .

MR. [EDWARD R.] ROYBAL [of California]: . . . The Bureau of the Mint has been operating under one form or another since this country was first founded. The Mint has been minting and issuing coins pursuant to authority found in title 31 of the United States Code. Section 251 of title 31 establishes the Bureau and I would just like to read to the Chairman the first part of section 251. It reads as follows:

There shall be established in the Treasury Department a Bureau of the Mint embracing as an organization and under its control all mints for the manufacture of coin and all assay offices for the stamping of bars which has been or which may be authorized by law.

Section 253 states:

The Director of the Mint shall have the general supervision of all mints and assay offices and shall make an annual report to the Secretary of the Treasury of their operations at the close of each fiscal year,

14. 129 CONG. REC. —, 98th Cong. 1st Sess.

and from time to time such additional reports setting forth the operational conditions of such institutions as the Secretary shall require, and shall lay before him the annual estimates for their support; and the Secretary of the Treasury shall appoint the number of clerks classified according to law necessary to discharge the duties of said Bureau.

Mr. Chairman, I would like to point out that in addition to the sections I have just read, sections 261 through 463 of title 31 set forth in detail the duties of the Bureau of the Mint, and those sections are replete with requirements that the mint must accomplish certain acts.

I would like to cite Deschler's and Brown's Procedure of the House, chapter 25, section 5.7, which states in part, as follows. Section 5.7 reads as follows:

The failure of Congress to enact into law separate legislation specifically authorizing appropriations for existing programs does not necessarily render appropriations for those programs subject to a point of order, where more general existing law authorizes appropriations for such programs. Thus, a paragraph in a general appropriation bill purportedly containing some funds not yet specifically authorized by separate legislation was held not to violate Rule XXI clause 2, where it was shown that all of the funds in the paragraph were authorized by more general provisions of law currently applicable to the programs in question. . . .

THE CHAIRMAN:⁽¹⁵⁾ The Chair is prepared to rule.

The gentleman from Illinois makes the point of order that there is no au-

thorization for the expenses contained in the line in question.

The gentleman from California cited an organic statute creating the office in question, namely, the Bureau of the Mint.

The Chair is aware of the bill, H.R. 2628, passed by the House earlier this year, but not yet law. That bill, if and when it becomes law, will authorize some Bureau of Mint appropriations for fiscal 1984 and provide other permanent authorizations for salaries and expenses. Absent citation to such a statute requiring annual authorization, however, the Chair believes that the gentleman from California may rely on an organic act creating the office and authorizing it as a standing authorization in law for the purposes of the Bureau and, therefore, overrules the point of order.

[Subsequently, the following exchange occurred:]

THE CHAIRMAN: The gentleman from California requested the Chair to entertain a return to a point of order earlier overruled.

The Chair in rare circumstances may agree to such a request and has recognized the gentleman to be heard. . . .

MR. ROYBAL: Mr. Chairman, I yield to the gentleman from Illinois (Mr. Annunzio).

MR. ANNUNZIO: . . . I am renewing my point of order that the appropriation violates clause 2 of rule XXI, on page 5, line 14, of the rules of the House, in that they appropriate funds without an authorization.

A misunderstanding concerning the point of order has occurred because of a change in the law that took place in 1981, the Omnibus Reconciliation Act.

15. Gerry E. Studds (Mass.).

Prior to the passage of the act, the mint operated under a permanent authorization and needed only to come before the Appropriations Committee to obtain its funds.

In 1981, however, the Congress changed that law so that the mint had to first obtain a yearly authorization before obtaining an appropriation. . . .

THE CHAIRMAN: The Chair desires to make a statement. The Chair apologizes in advance to the Members for the length of the statement.

Earlier, during consideration of the bill in the Committee of the Whole, the Chair overruled a point of order against the paragraph appropriating funds for the Bureau of the Mint, salaries and expenses, on page 5, lines 14 through 17. In argument on the point of order, the manager of the bill cited provisions of law establishing and delegating functions to the Bureau of the Mint, as sufficient authority to authorize appropriations for annual expenses and salaries. The Chair has since become aware that those provisions of law have been repealed, and that the statutes relating to the mint have been amended, first by the Omnibus Reconciliation Act of 1981, then by the Omnibus Reconciliation Act of 1982, and then by a complete recodification of title 31 of the United States Code. No specific authorization of appropriations for fiscal year 1984 has yet been enacted, but one has passed the House (H.R. 2628).

The Omnibus Reconciliation Act of 1981, Public Law 97-35, provided in section 382 that the sentence in the Code (31 U.S.C. 369) which had been construed to provide a permanent au-

thorization of appropriations for the Bureau of the Mint be repealed, and replaced that language with an authorization of appropriations for fiscal year 1982 only. The report on that measure in the House stated, on page 129, that by repealing the existing statutory provision and by limiting the authorization to fiscal year 1982 only, it is the intent of the committee to repeal the permanent authorization for the salaries and expenses of the Bureau of the Mint. The joint explanatory statement of the conferees on the Reconciliation Act reiterated that the House bill terminated the permanent authorization for appropriations for salaries and expenses of the Bureau of the Mint (page 717). The Omnibus Reconciliation Act of 1982, Public Law 97-253, in section 202, changed the 1982 authorization into a fiscal year 1983 authorization. Public Law 97-258 codified in its entirety title 31 of the United States Code, and carried the 1982 authorization in section 5132 of title 31; all the old provisions of title 31 dealing with the mint, previously cited in argument on the point of order, have been repealed. Public Law 97-452 modified the codification to reflect the 1983 authorization carried in the 1982 Reconciliation Act. There remains no statutory language relating to the mint which may be construed as a permanent authorization.

The Chair recognizes that it is unusual for the Chair to reverse a decision or ruling previously made, and it is the opinion of the Chair that he should undertake such a course of action only where new and substantial facts or circumstances, which were not evident or stated in argument on a point of order, are subsequently brought to his attention.

In rare instances, the Chair has reversed a decision on his own initiative; for example, the Chairman of the Committee of the Whole in 1927, as cited in volume 8 of Cannon's Precedents section 3435, held that a provision in a general appropriation bill constituted legislation after reviewing a statute he was not previously aware of when he had rendered a contrary decision.

For the reasons stated, and in view of the unique and compelling circumstances, the Chair holds that the language in the bill on page 5, lines 14 through 17, appropriating funds for the Bureau of the Mint, is unauthorized and, therefore, rules the paragraph out of order.

Parliamentarian's Note: The Chairman of the Committee of the Whole may in his discretion entertain (or initiate himself) a request for further argument on a point of order previously ruled upon, even where the paragraph has been passed unamended in the reading of the bill for amendment (and unanimous consent is not required),⁽¹⁶⁾ where existing law not previously called to the Chair's attention would require the ruling to be reversed.

As indicated by the Chair's reservations, such authority should be exercised in only the most compelling circumstances, such as where the state of the law has been completely altered and not made known to the Chair; it

should not be exercised in order to further interpret laws already cited. Although the committee in the instant case had clearly met the burden of proof on the previous ruling, their position and statutory authority had not been communicated to the Parliamentarian or Chair before that ruling, and the Chair had been forced to rule without the full benefit of arguments on the point of order.

§ 10 Evidence of Authorization

Citation of Statute

§ 10.1 Language in a general appropriation bill permitting funds in that paragraph to remain available until expended was held in order upon citation by the Committee on Appropriations of statutory authority therefor.

On Nov. 30, 1973,⁽¹⁷⁾ during consideration in the Committee of the Whole of a supplemental appropriation bill (H.R. 11576), a point of order was raised against the following provision and proceedings ensued as indicated below:

17. 119 CONG. REC. 38845, 93d Cong. 1st Sess.

16. See 8 Cannon's Precedents § 3435.